



WASHOE COUNTY

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STAFF REPORT BOARD MEETING DATE: May 23, 2017

DATE: April 27, 2017
TO: Board of County Commissioners
FROM: Kimble O. Corbridge, P.E., CFM, Engineering and Capital Projects,
Community Services Dept., 328-2054, kcorbridge@washoecounty.us
THROUGH: Dwayne Smith, P.E., Division Director, Engineering and Capital Projects,
Community Services Department, 328-2043, desmith@washoecounty.us
SUBJECT: Recommendation to: 1) approve Amendment #4 to a Project Funding Agreement between the State of Nevada acting by and through its Division of State Lands and the Fund to Protect Lake Tahoe and Washoe County for the East Incline Village Phase I Water Quality Improvement Project; and 2) accept grant funding [\$380,000 for the project plus \$19,000 for administrative costs, for a total of \$399,000; with matching funds of \$380,000 funded through a USDA Forest Service grant] effective upon execution of the agreement documents through December 31, 2017; and 3) if accepted, authorize the Director of Community Services to execute Amendment #4; and 4) direct the Comptroller's Office to make the necessary budget amendments. (Commission District 1.)

SUMMARY

This amendment to the funding agreement and grant award represents an increase in funding for the East Incline Village Phase I Water Quality Improvement Project. This award consists of \$380,000 for project construction and 5% (\$19,000) for administrative costs for a total of \$399,000. The total project cost is estimated at \$3,760,000 and is funded entirely through grants from the Nevada Division of State Lands (NDSL) and USDA Forest Service (USFS). Increases in financial assistance were requested from and approved by both the NDSL and USFS to cover construction costs which came in higher than anticipated. Acceptance of these awards will enable the project to be constructed without utilizing the full \$750,000 in Tahoe Regional Planning Agency Water Quality Mitigation Funds which are budgeted for the project, and which can be reserved for other purposes.

County Priority/Goal supported by this item: Safe, Secure and Healthy Communities.

PREVIOUS ACTION

On March 28, 2017, the Board of County Commissioners (Board) awarded a bid and approved the construction agreement to the lowest responsive, responsible bidder, Burdick Excavation Company, in the amount of \$2,899,950 for the East Incline Village Phase I Water Quality Improvement Project.

AGENDA ITEM # 8

On October 11, 2016, the Board approved the Interlocal Agreement to Implement the Lake Tahoe Total Maximum Daily Load between Washoe County and the Nevada Division of Environmental Protection and directed staff to initial a preliminary study to address future program cost and funding alternatives.

On January 27, 2015, the Board accepted Amendment #1 to the Grant Award from the Division of State Lands for the East Incline Village Phase I Water Quality Improvement Project in the amount of \$750,000.

On January 14, 2014, the Board accepted a Grant Award from the Nevada Division of State Lands for the East Incline Village Phase I Water Quality Improvement Project in the amount of \$750,000.

On November 12, 2013, the Board approved in concept the East Incline Village Phase I Water Quality Improvement Project.

GRANT AWARD SUMMARY

Project/Program Name: East Incline Village Phase I Water Quality Improvement Project, EIP 01.01.01.46

Scope of the Project: Planning, permitting, environmental assessment, design and specialized construction management services and construction. The Engineering and Capital Projects Division will provide grant coordination, project oversight, construction management and inspection services.

Benefit to Washoe County Residents: Improvement in water quality and clarity of Lake Tahoe, through erosion control and various improvements to storm drainage and runoff discharging into Lake Tahoe. The project will help Washoe County meet the requirements of Lake Tahoe TMDL (Total Maximum Daily Load) as documented in the ILA with the Nevada Division of Environmental Protection.

On-Going Program Support: Washoe County will be responsible for monitoring and for maintenance of any facilities constructed for a minimum of 20 years. The County's costs for maintenance are expected to be materially higher than they are currently.

Award Amount: \$399,000

Grant Period: Upon execution through December 31, 2017

Funding Source: State of Nevada, Division of State Lands

Pass Through Entity: N/A

CFDA Number: N/A

Grant ID Number: FTPLT 13-002

Match Amount and Type: \$380,000 from the US Forest Service

Sub-Awards and Contracts: Construction contract awarded to Burdick Excavating Company in the amount of \$2,899,950. (The bid award preceded this grant award based on available funding from TRPA Water Quality Mitigation Funds, which the department may not need to utilize.)

FISCAL IMPACT

Should the board approve and accept this grant award and approve these amendments, the adopted budget will be increased by \$399,000 in both revenues and expenditures in the following accounts:

| Cost Object | G/L Account | Amount |
|--------------------|------------------------------|---------------|
| IN19053 | 432100-State Grants | \$399,000 |
| IN19053 | 818000-Transfer to Intrafund | \$399,000 |
| PW920589 | 781001-Land Imprv Capital | \$399,000 |
| PW920589 | 818000-Transfer to Intrafund | \$399,000 |

An award for matching grant funds in the amount of \$380,000 from the USDA Forest Service for the project is being brought to the Board for acceptance in a separate item. Project expenses are paid from the Capital Improvement Fund (402) and are on a reimbursement basis.

RECOMMENDATION

It is recommended that the Board of County Commissioners: 1) approve Amendment #4 to a Project Funding Agreement between the State of Nevada acting by and through its Division of State Lands and the Fund to Protect Lake Tahoe and Washoe County for the East Incline Village Phase I Water Quality Improvement Project; and 2) accept grant funding [\$380,000 for the project plus \$19,000 for administrative costs, for a total of \$399,000; with matching funds of \$380,000 funded through a USDA Forest Service grant] effective upon execution of the agreement documents through December 31, 2017; and 3) if accepted, authorize the Director of Community Services to execute Amendment #4; and 4) direct the Comptroller's Office to make the necessary budget amendments.

POSSIBLE MOTION

Should the Board agree with staff's recommendation, a possible motion would be: "Move to : 1) approve Amendment #4 to a Project Funding Agreement between the State of Nevada acting by and through its Division of State Lands and the Fund to Protect Lake Tahoe and Washoe County for the East Incline Village Phase I Water Quality Improvement Project; and 2) accept grant funding [\$380,000 for the project plus \$19,000 for administrative costs, for a total of \$399,000; with matching funds of \$380,000 funded through a USDA Forest Service grant] effective upon execution of the agreement documents through December 31, 2017; and 3) if accepted, authorize the Director of Community Services to execute Amendment #4; and 4) direct the Comptroller's Office to make the necessary budget amendments."

**AMENDMENT #4
REVISED 4-24-17**

**A Project Funding Agreement Between the State of Nevada
Acting By and Through Its Division of State Lands and the
Fund to Protect Lake Tahoe (Grantor)**

901 S. Stewart Street, Suite 5003
Carson City, NV 89701
phone: (775) 684-2720
Fax: (775) 684-2721

And

**Washoe County – Community Services Department
(Grantee)**

1001 East 9th Street
PO Box 11130
Reno NV 89520
phone: (775) 328-2040
Fax: (775) 328-3699

WHEREAS; Nevada's legislature in 2009 authorized the issuance of general obligation bonds in the face amount of \$100,000,000 between July 1, 2009 and June 30, 2020 to carry out a portion of the State's share of the Environmental Improvement Program; and

WHEREAS the Nevada legislature authorized the state land registrar to establish a program for the protection of the Lake Tahoe Basin including without limitation: air and water quality; restoration and protection of natural watercourses, wetlands, fisheries, vegetation and forests, prevention and control of erosion and the enhancement of recreational and tourism opportunities in the basin; and

WHEREAS, NRS 321.5956(3) authorizes the state land registrar to enter into a funding agreement or other agreement, within the limits of available money, with non-profit organizations, and other persons or entities to carry out a program to preserve, restore and enhance the natural environment of the Lake Tahoe Basin; and

WHEREAS, programs to enhance, preserve and restore the natural environment of the Lake Tahoe basin may be conducted on public property and privately owned property with the consent of the owner of the property as long as public money is only expended for a public purpose and the public interest is adequately protected; and

WHEREAS, the state land registrar has determined this project is both necessary and in the best interests of the natural environment at Lake Tahoe;

NOW, THEREFORE, in consideration of the aforesaid premises, the parties mutually agree as follows:

1. **REQUIRED APPROVAL.** This Funding Agreement shall not become effective until and unless approved by the state land registrar and the authorized Washoe County Community Services Department representative.
2. **DEFINITIONS.** "Grantor" means the Nevada Division of State Lands, its officers and employees. "Grantee" means the Washoe County Community Services Department.
3. **FUNDING AGREEMENT TERM.** This Funding Agreement shall be effective from November 18, 2013 to December 31, 2017, unless sooner terminated by either party as specified in paragraph 9 herein.
4. **NOTICE.** All notices or other communications required or permitted to be given under this Funding Agreement shall be in writing and shall be deemed to have been duly given if delivered personally in hand, by telephonic facsimile with simultaneous regular mail, or mailed certified mail, return receipt requested, postage prepaid on the date posted, and addressed to the other party at the address specified above.

5. **INCORPORATED DOCUMENTS.** The parties agree that the responsibilities, and duties of each party as well as the scope of the project shall be specifically described; this Funding Agreement incorporates the following attachments in descending order of constructive precedence;

- ATTACHMENT A: Washoe County – East Incline Village Phase I, EIP # 01.01.01.46 – Erosion Control, Water Quality Improvement Project (FTPLT 13-002) Summary & Special Conditions
- ATTACHMENT B: Tahoe Bond Act Regulations – LCB File No. R040-12-02, NAC 321.300-365.
- ATTACHMENT C: Grant Application submitted by Kris Klein, PE, Senior Licensed Engineer, Washoe County Community Services Department, Engineering and Capital Projects Division

6. **COST:** Grantor agrees to provide a maximum of \$1,808,571.43 of the funds actually expended and necessary for the construction of the described project contingent upon Grantee's compliance with all of the terms and conditions herein. See attachment A for description.

7. **ASSENT.** The parties agree that the terms and conditions listed on incorporated attachments of this Funding Agreement are also specifically a part of this Funding Agreement and are limited only by their respective order of precedence and any limitations specified.

8. **INSPECTION & AUDIT.**

a. **Books and Records.** Grantee agrees to keep and maintain under general accepted accounting principles (GAAP) full, true and complete records, contracts, books, and documents as are necessary to fully disclose to Grantor, or its authorized representatives, upon audits or reviews, sufficient information to determine compliance with all state and federal regulations and statutes.

b. **Inspection & Audit.** Grantee agrees that the relevant books, records (written, electronic, computer related or otherwise), including, without limitation, relevant accounting procedures and practices, financial statements and supporting documentation shall be subject, at any reasonable time, to inspection, examination, review, audit, and copying at any office or location of Grantee where such records may be found by Grantor's designated representative.

c. **Period of Retention.** All books, records, reports, and statements relevant to this Funding Agreement must be retained a minimum of three years. The retention period runs from the date of Grantor's last grant payment, or from the date of termination of the Funding Agreement, whichever is later. Retention time shall be extended when an audit is scheduled or in progress for a period reasonably necessary to complete an audit and/or to complete any administrative and judicial litigation which may ensue.

9. **FUNDING AGREEMENT TERMINATION.**

a. This Funding Agreement is subject to and contingent upon sufficient funds being appropriated, budgeted, and otherwise made available by the State Legislature. The Grantor may terminate this Funding Agreement, and Grantee waives any and all claim(s) for damages, effective immediately upon receipt of written notice (or any date specified therein) if for any reason the funding from Grantor is not appropriated or is withdrawn, limited, or impaired.

b. Grantor may only terminate this project agreement as specified in paragraph 18 of the incorporated attachment A, the project funding agreement. If any state, county, city or federal license, authorization, waiver, permit, qualification or certification required by statute, ordinance, law, or regulation to be held by Grantee to provide the goods or services required by this Funding Agreement is for any reason denied, revoked, debarred, excluded, terminated, suspended, lapsed, or not renewed; or if Grantee becomes insolvent, subject to receivership, or becomes voluntarily or involuntarily subject to the jurisdiction of the bankruptcy court; or if it is found by the State that any quid pro quo or gratuities in the form of money, services, entertainment, gifts, or otherwise were offered or given by Grantee, or any agent or representative of Grantee, to any officer or employee of the State of Nevada with a view toward securing a funding agreement or securing favorable treatment with respect to awarding, extending, amending, or making any determination with respect to the performing of such funding agreement, then this funding agreement may be immediately terminated by the Grantor.

- i. Time to Correct. Termination upon a declared default or breach may be exercised only after service of formal written notice as specified in paragraph (4), and the subsequent failure of the defaulting party within 30 calendar days of receipt of that notice to provide evidence, satisfactory to the aggrieved party, showing that the declared default or breach has been corrected.
- ii. Winding Up Affairs Upon Termination. In the event of termination of this Funding Agreement for any reason, the parties agree that the provisions of this paragraph survive termination:
 - aa. The parties shall account for and properly present to each other all claims for fees and expenses and pay those which are undisputed and otherwise not subject to set off under this Funding Agreement. Neither party may withhold performance of winding up provisions solely based on nonpayment of fees or expenses accrued up to the time of termination;
 - ba. Grantee shall satisfactorily complete work in progress at the agreed rate (or a pro rata basis if necessary) if so requested by the Grantor;
 - ca. Grantee shall execute any documents and take any actions necessary to effectuate an assignment of this Funding Agreement if so requested by the Grantor;

10. LIMITED LIABILITY. The State will not waive and intends to assert available NRS chapter 41 liability limitations in all cases.

11. FORCE MAJEURE. Neither party shall be deemed to be in violation of this Funding Agreement if it is prevented from performing any of its obligations hereunder due to strikes, failure of public transportation, civil or military authority, act of public enemy, accidents, fires, explosions, or acts of God, including, without limitation, earthquakes, floods, winds, or storms. In such an event the intervening cause must not be through the fault of the party asserting such an excuse, and the excused party is obligated to promptly perform in accordance with the terms of the Funding Agreement after the intervening cause ceases.

12. INDEMNIFICATION. To the fullest extent permitted by law, Grantee shall indemnify, hold harmless and defend, not excluding the State's right to participate, the State from and against all liability, claims, actions, damages, losses, and expenses, including, without limitation, reasonable attorneys' fees and costs, arising out of any alleged negligent or willful acts or omissions of Grantee, its officers, employees and agents for this funding agreement.

13. WAIVER OF BREACH. Failure to declare a breach or the actual waiver of any particular breach of the Funding Agreement or its material or nonmaterial terms by either party shall not operate as a waiver by such party of any of its rights or remedies as to any other breach.

14. SEVERABILITY. If any provision contained in this Funding Agreement is held to be unenforceable by a court of law or equity, this Funding Agreement shall be construed as if such provision did not exist and the nonenforceability of such provision shall not be held to render any other provision or provisions of this Funding Agreement unenforceable.

15. ASSIGNMENT. Grantee shall neither assign, transfer nor delegate any rights, obligations or duties under this Funding Agreement without the prior written consent of the State.

16. PUBLIC RECORDS. Pursuant to NRS 239.010, information or documents received from Grantee may be open to public inspection and copying. The State will have the duty to disclose unless a particular record is made confidential by law or a common law balancing of interests.

17. FEDERAL FUNDING. In the event federal funds are used for payment of all or part of this Funding Agreement:
- a. Grantee certifies, by signing this Funding Agreement, that neither it nor its principals are presently debarred, suspended, proposed for debarment, declared ineligible, or voluntarily excluded from participation in this transaction by any federal department or agency. This certification is made pursuant to the regulations implementing Executive Order 12549, Debarment and Suspension, 28 C.F.R. pt. 67, § 67.510, as published as pt. VII of the May 26, 1988, Federal Register (pp. 19160-19211), and any relevant program-specific regulations. This provision shall be required of every subcontractor receiving any payment in whole or in part from federal funds.
 - b. Grantee shall comply with all terms, conditions, and requirements of the Americans with Disabilities Act of 1990 (P.L. 101-136), 42 U.S.C. 12101, as amended, and regulations adopted thereunder contained in 28 C.F.R. 26.101-36.999, inclusive, and any relevant program-specific regulations.
 - c. Grantee shall comply with the requirements of the Civil Rights Act of 1964, as amended, the Rehabilitation Act of 1973, P.L. 93-112, as amended, and any relevant program-specific regulations, and shall not discriminate against

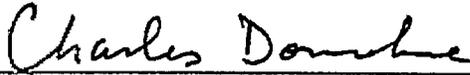
any employee or offer for employment because of race, national origin, creed, color, sex, religion, age, disability or handicap condition (including AIDS and AIDS-related conditions.)

18. PROPER AUTHORITY. The parties hereto represent and warrant that the person executing this Funding Agreement on behalf of each party has full power and authority to enter into this Funding Agreement. Grantee acknowledges that as required by statute or regulation this Funding Agreement is effective only after approval by the Division of State Lands Administrator and only for the period of time specified in the Funding Agreement. Any services performed by Grantee before this Funding Agreement is effective or after it ceases to be effective are performed at the sole risk of Grantee.

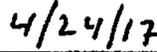
19. GOVERNING LAW; JURISDICTION. This Funding Agreement and the rights and obligations of the parties hereto shall be governed by, and construed according to, the laws of the State of Nevada. Grantee consents to the jurisdiction of the Nevada district courts for enforcement of this Funding Agreement.

20. ENTIRE FUNDING AGREEMENT AND MODIFICATION. This Funding Agreement and its integrated attachment(s) constitute the entire agreement of the parties and such are intended as a complete and exclusive statement of the promises, representations, negotiations, discussions, and other agreements that may have been made in connection with the subject matter hereof. Unless an integrated attachment to this Funding Agreement specifically displays a mutual intent to amend a particular part of this Funding Agreement, general conflicts in language between any such attachment and this Funding Agreement shall be construed consistent with the terms of this Funding Agreement. Unless otherwise expressly authorized by the terms of this Funding Agreement, no modification or amendment to this Funding Agreement shall be binding upon the parties unless the same is in writing and signed by the respective parties hereto.

IN WITNESS WHEREOF, the parties hereto have caused this Funding Agreement to be signed and intend to be legally bound thereby.



Charles Donohue-Grantor Signature
Division of State Lands-Administrator



Date

Washoe County Community Services Department

Date

Title

**AMENDMENT # 4
ATTACHMENT A
REVISED 4-24-17**

**PROJECT FUNDING AGREEMENT AMENDMENT #4 for East Incline Village Phase I
Water Quality Improvement Project (FTPLT 13-002)
Summary & Special Conditions**

Therefore, the East Incline Village Phase I, FTPLT 13-002, is hereby amended to increase the Estimated Project Cost by a total of \$760,00.00, as well as, increasing both the Local Share and State Share of the project by a total \$ 380,000.00 each. The following will replace Attachment A of the original and all prior amendments of the funding agreement, up to the Project Scope:

GRANTEE: Washoe County Community Service Department

Project Number FTPLT 13-002

Project Title: East Incline Village Phase I

Period Covered By This Agreement: November 18, 2013 – December 31, 2017

Tax ID Number: 88-6000031

Project Cost:

| | |
|---|------------------------|
| A. Estimated Project Cost (Planning, Design and Construction) | \$ 3,688,571.43 |
| B. Local Share of Project Cost | \$ 1,880,000.00 |
| C. State Share of Project Cost | \$ 1,808,571.43 |
| D. State Share of Administration costs (5% of C) | \$ 90,428.57 |
| E. Total State Grant (C plus D) | \$ 1,899,000.00 |

Refer to A: Planning, Design and Construction Costs are currently estimated at \$3,688,571.43.

Refer to B: Washoe County is responsible for the ACTUAL costs of planning, design, construction and construction engineering. This is currently estimated to be \$1,880,000.00. However, costs will adjust to actual expenditures of project planning, design, construction and construction engineering.

Refer to C: The State is responsible for costs of planning, design, construction and construction engineering. This is currently estimated to be \$1,808,571.43. Planning, design, construction and construction engineering costs will adjust to actual expenditures, not to exceed \$1,808,571.43 unless the grant is amended by the Nevada Division of State Lands.

Refer to D: Administrative costs – 5% of State Share of Project Cost, is estimated at \$90,428.57. The County is not required to match any portion of this 5%. These administrative

**AMENDMENT # 4
ATTACHMENT A
REVISED 4-24-17**

costs will adjust to actual expenditures of the project design and construction, not to exceed \$90,428.57 unless grant is amended by the State. The County will receive 5% of the total State Share of the Project to aid in covering administrative costs of the County directly related to this project.

STATE OF NEVADA

Charles Donohue

4/24/17

Charles Donohue-Grantor Signature
Division of State Lands-Administrator

Date

GRANTEE

Washoe County Community Service Department

Date